Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning Review	)	
of the Equal Access Nondiscrimination	)	CC Docket No. 02-39
Obligations Applicable to Local Exchange	)	
Carriers	)	
	)	
	)	

COMMENTS OF SBC COMMUNICATIONS INC.

Anu Seam
Gary L. Phillips
Paul K. Mancini
SBC Communications Inc.
1401 Eye Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 326-8891–Phone
(202) 326-4863- Facsimile

Its Attorneys

May 13, 2002

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning Review	)	
of the Equal Access Nondiscrimination	)	CC Docket No. 02-39
Obligations Applicable to Local Exchange	)	
Carriers	)	
	)	
	)	

COMMENTS OF SBC COMMUNICATIONS

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively "SBC") files these Comments in response to the FCC's Notice of Inquiry, FCC 02-57 (Notice), examining the continued importance of the equal access and nondiscrimination obligations of § 251(g) of the Communications Act of 1934, as amended (the Communications Act). In this Notice, the Commission seeks to: (1) develop a baseline record regarding the current state of equal access and nondiscrimination obligations; (2) assess what changes may be necessary to modernize existing equal access and nondiscrimination obligations, especially for joint marketing and teaming arrangements; and (3) determine the appropriate process for changing or eliminating any existing obligations should it decide to do so.

I. Introduction and Summary

The Modification of Final Judgement (MFJ), as construed by Judge Greene, effected a comprehensive array of nondiscrimination and equal access obligations. None of these obligations continues to serve any purpose. Many of them have been superseded by statutory obligations and are simply redundant. Others are more pernicious than that and not only distort competition but also deny consumers the full benefit of the 1996 Act.

The MFJ requirements were imposed at a time when local exchange carriers were given franchised monopolies and it was universally believed that local service was a natural monopoly. Today, exclusive franchises are prohibited by law and growing intermodal and intramodal competition have put to rest any notion that local service remains a natural monopoly. Moreover, "convergence" — once a buzzword — has become a reality. Cable providers, not only offer video services, but local and long distance services and high-speed Internet access. CLECs, as well, offer a full range of services to their subscribers, as do wireless providers. Under these circumstances, the MFJ and other marketing restrictions that were premised on the notion of a local monopoly and a strict market stratification are archaic and should be eliminated.

Specifically, the Commission should eliminate the BOCs to offer bundled packages of services, just as their competitors are able to offer today, without being hampered by historical nondiscrimination obligations. Further, it should also eliminate the archaic requirement that BOCs offer to read customers, in random order, a list of IXCs available for presubscription. It also should clarify that the nondiscrimination procurement obligation, which bears no relation to the nondiscrimination issues in the marketplace today, has been superseded by § 272(c) and is not preserved by § 251(g). And finally, the Commission should clarify that BOCs may enter into any kind of teaming or business arrangements with unaffiliated carriers as long as they do not violate the requirements of § 271. Removal of these obligations is critical to allow the BOCs to compete on an equal footing with other providers. To impose nondiscrimination obligations on the BOCs alone leads to an absurd and anti-competitive result.

II. Section 251(g) Preserves a Variety of Existing Regulations Including, But Not Limited to, MFJ Obligations.

Section 251(g) requires that:

> each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to

> such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.[1]

In the Notice, the Commission asks parties to identify requirements that have been preserved by § 251(g). These requirements fall into two broad categories: those imposed by the MFJ (as interpreted and modified over the years) and those imposed by Commission regulation.

The MFJ requirements approved by Judge Greene in 1982 were designed to ensure that the newly divested Bell operating companies did not discriminate in favor of their former affiliate, AT&T.[2] As stated by Judge Greene:

> One of the government's principal contentions in the *AT&T* case was that the Operating Companies provided interconnection to AT&T's innercity competitors which were inferior in many respects to those granted to AT&T's own Long Lines Department. There was ample evidence to sustain these contentions.
>
> Although after divestiture, the Operating Companies will no longer have the same incentive to favor AT&T, a substantial AT&T bias has been designed into the integrated telecommunications network, and the network, of course, remains in that condition. It is imperative that any disparities in interconnection be eliminated so that all interexchange and information service providers will be able to compete on an equal basis.[3]

To this end, the MFJ included a variety of equal access and nondiscriminatory interconnection requirements. Among these requirements, the BOCs were required to: (1) offer exchange access, on an unbundled, tariffed basis, that is equal in type, quality and price to that

---

[1] Section 251(g) was established primarily because Congress was concerned that the 1996 Act eliminated the MFJ and the GTE Consent Decrees in their entirety – Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 122 (1996).

[2] *United States v. AT&T*, 552 F.Supp. 131, 142 (D.D.C. 1982) (*MFJ*).“Section II of the proposed decree would complement these structural changes by various restrictions which are said to be designed (1) to prevent the divested Operating Companies from discriminating against AT&T's competitors[.]”

[3] *Id.* at 195; *See also United States v. AT&T*, 569 F.Supp. 1057, 1076 (D.D.C. 1983) (*MFJ 1983*).
“It was, in brief, the decree's purpose to give AT&T's competitors the opportunity to compete with AT&T on equal terms without artificial impediments.”

provided to AT&T; (2) separately tariff each exchange access service; (3) offer as a tariffed service exchange access that permits each subscriber automatically to route all interexchange traffic to the interexchange carrier (IXC) of the customer's designation without the use of access codes; (4) maintain dialing parity for interexchange services notwithstanding any changes in interexchange dialing requirements as a result of numbering plan changes; (5) not require an IXC to pay for types of exchange access that it does not utilize; and (6) establish a nondiscriminatory presubscription process that informs consumers of their choices of interexchange carriers. [4]

The MFJ also prohibited the BOCs from discriminating between AT&T and other IXCs in the: (1) establishment and dissemination of technical information and interconnection standards; (2) interconnection and use of BOC telecommunications services and facilities or in the charges for services; and (3) provision of new services and the planning for and implementation of the construction or modification of facilities.[5]

Although the MFJ by its terms and original intent specifically proscribed discrimination *in favor of AT&T*, the MFJ court applied the MFJ so as to prohibit discrimination in favor of *any* carrier or provider. Thus, for instance, when Southwestern Bell endorsed the services of a reseller of interexchange services, the court found that "by granting an endorsement of quality, Southwestern Bell has violated the nondiscrimination provisions of § II(B) of the decree."[6] Similarly, in a case examining the propriety of BOC practices relating to calling cards, the court determined that the BOCs could issue calling cards usable for both local and long distance calls,

[4] *United States v. Western Electric*, No. 82-0192, (D.D.C. 1992) Modification of Judgment, App. B.

[5] *Id. at* Sec IIB. In addition to the aforementioned requirements, the MFJ included nondiscriminatory procurement obligations that were designed to ensure that the BOCs do not discriminate in favor of AT&T in the purchase of services or equipment. SBC believes that these obligations were not preserved by section 251(g) because they are not "equal access" or "nondiscriminatory interconnection restrictions and obligations." Moreover, these provisions largely have been superseded by section 272(c), which forbids the BOCs from discriminating in favor of their own interexchange carrier affiliates in the procurement of goods or services. However, SBC continues to abide by these requirements because it is unclear whether the Commission believes that they have been eliminated.

[6] *United States v. AT&T*, Civ. Action No. 82-0192, slip op., (D.D.C. Apr. 11, 1985).

provided that they did not discriminate among the various interexchange carriers with respect to calling cards.[7] In the words of the Commission, the court "appeared to articulate broadly a principle of non-favoritism underlying the BOCs' equal access and nondiscrimination obligations."[8] Consistent with this construction, SBC has maintained a policy of non-discrimination against any interexchange carrier or information service provider.

Although the above MFJ obligations did not apply to independent LECs, the Commission imposed certain equal access and presubscription requirements on independent LECs as well.[9] Most importantly, the Commission required independent LECs to implement a balloting and allocation system for interexchange providers.[10]

Apart from these MFJ requirements, including those extended by regulation to independent LECs, the Commission has developed its own complex web of regulations over the years relating to equal access and nondiscriminatory interconnection. These include the access charge regime[11] and the so-called "enhanced service provider" (ESP) exemption from that

[7] *United States v. Western Electric*, 698 F. Supp. 348, 353 (D.D.C. 1988).

[8] *AT&T Corp. v. Ameritech Corp, et al.,* File Nos. E-98-41, 42 and 43, *Memorandum Opinion and Order*, 13 FCC Rcd 21438 ¶ 55 (1998) (*Qwest Teaming Order*).

[9] *MTS and WATS Market Structure, Phase III*, Report and Order, 100 F.C.C. 2nd 860 (1985); Investigation into the Quality of Equal Access Services, Memorandum Opinion and Order, 60 Rcd. Reg. (P.&F) 417, 419 (1986).

[10] *Id.*

[11] Access charges are the payments that interexchange carriers and end users make to the local exchange carrier for exchange access services. The Commission originally established rules for access charges in the early 1980's, prior to divestiture, pursuant to its authority under § 201 of the Communications Act. After 1996, the Commission introduced access charge reforms and has issued a number of orders to streamline the access charge regime in view of the competitive goals of the 1996 Act. Access charge reforms are currently being considered by the Commission in the Intercarrier Compensation NPRM to determine the feasibility of replacing the existing carrier-to-carrier compensation arrangements, e.g., switched access charges, with a bill and keep regime. No additional regulatory changes are needed to the access charge regime outside the changes proposed by the Commission's existing Intercarrier Compensation proceeding. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

regime.[12] The Commission also has established equal access and nondiscrimination obligations in its *Computer II* and *Computer III* orders, which apply to some LECs that provide wireline services, and not just to the BOCs. [13] All of these requirements were carried forward by § 251(g).

III. The Equal Access and Nondiscriminatory Interconnection Obligations Imposed by the MFJ are Unnecessary and/or Redundant and Should be Eliminated.

The Commission should move expeditiously to eliminate the MFJ requirements that were perpetuated by § 251(g). Some of these requirements — such as nondiscriminatory interconnection requirements, tariffing, and dialing parity requirements — are redundant. Sections 201, 202, 203, 251(b)(3), and 272(c) already give the Commission ample authority to address these matters. There is no reason to maintain superfluous articulations of the same obligations.

Other provisions — most notably restrictions that apply to the BOCs' marketing activities — establish substantive restrictions on BOC activities that are, not only unnecessary, but that stand as barriers to robust competition and the efficient delivery of services to consumers. The most glaring of these provisions are the nondiscrimination requirements that constrain the BOCs from offering consumers the bundled packages of services that they covet. Other examples include script requirements that encumber BOC marketing activities and MFJ procurement requirements. These obligations are discussed below.

---

[12] The "ESP exemption" is a subset of the access charge compensation regime that permits information service providers to pay intrastate business service prices for the use of ILEC exchange facilities instead of the switched access charges typically paid by carriers. This "ESP exemption" was established by the Commission in 1983 as a temporary measure to promote the growth of the information services industry. *See, MTS and WATS Market Structure*, First Report and Order, 93 F.C.C. 2d 241(1983).

[13] The Commission recently provided a detailed history of the Computer II and III line of decisions in the Wireline Broadband Notice of Proposed Rulemaking. *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.,* CC Docket Nos. 02-33, 95-20 and 98-10, Notice of Proposed Rulemaking, FCC 02-42, ¶¶ 34-42 (rel. Feb. 15, 2002).

A. The Commission Should Allow BOCs the Same Flexibility to Offer Bundled Service Packages as Their Competitors Enjoy

As noted, the MFJ court construed the MFJ as establishing a broad non-discrimination obligation on the BOCs. SBC believes that § 272(g) superseded that obligation as it relates to joint marketing. Sections 272(g)(1) and (2) confer on the BOCs and their long-distance affiliates post–271 joint marketing authority, and § 272(g)(3) specifically provides that such authority "shall not be considered to violate the nondiscrimination provisions of [§ 272(c)]."

The Commission, however, has taken a cramped and formalistic view of the scope of § 272(g). It has held that the "marketing and sales" activities expressly permitted under § 272(g) include only customer inquiries, sales functions, and ordering. It thereby denied the BOCs the ability to engage in critical joint marketing functions, including product planning, design, and development. As a result, the BOCs are unable to offer their customers bundled service packages unless they are willing to offer the identical package in conjunction with unaffiliated carriers.[14]

SBC believes this interpretation of § 272(g) is wrong as a matter of law and policy. In construing § 271(e)(1), the Commission expressly held that the bundling of services into a package that can be sold in a single transaction constitutes joint marketing.[15] Section 272(g) also addresses joint marketing. In fact, the provision is entitled "JOINT MARKETING." Moreover, if anything, § 272(g) is *broader* in scope than § 271(e)(1) because it addresses the rights of BOCs and their affiliates to "market *and sell"* each other's services.[16] Yet the Commission somehow came to the conclusion that § 272(g) is narrower and, in particular, that it fails to

[14] Although BOC long-distance affiliates theoretically could offer their own bundled package of local and long-distance services, many states refuse to certify BOC long-distance affiliates as CLECs.

[15] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905, at ¶ 277 (1996) (*Non-Accounting Safeguards Order*).

[16] In essence, the Commission has narrowed the term "marketing and sales" to just "sales." Thus, the joint activity the Commission has permitted — taking two separate services and making one sales call — is not "joint marketing; " it is "joint sales."

address joint marketing by the BOCs. As a result of this construction, the Commission failed to carve joint marketing out from the § 272(c) nondiscrimination requirements or the MFJ nondiscrimination requirements. [17]

The Commission's construction of § 272(g) was not only incorrect as a matter of law, it only made no sense as a matter of public policy. The 1996 Act gave carriers the opportunity to be a single-source provider, not only of local and long-distance services, but wireless, video, internet access services and other on-line services, as well as equipment and enhanced services. Providers are seizing this opportunity because consumers seek the convenience and value afforded by such bundles. Cable providers, which can combine their voice services with video and high-speed Internet access services, offer telephony service to more than ten million homes and they have signed up more than 1.5 million customers. Wireless providers, as well, bridge the boundaries between local and long-distance service in pricing and marketing. Increasingly, they offer buckets of minutes for a single flat rate, and they have signed up customers in droves. There are now 1.45 wireline subscribers for every wireless subscriber. At the end of 2000, wireless carriers reported $62 billion in revenues, which represents more than half of the revenues that wireline carriers reported for local service.[18] Likewise, CLECs offer bundled service packages. In fact, of the customers SBC has lost to its competitors, about three-quarters have selected the same CLEC for local, long-distance, and intraLATA toll services. CLECs now account for about 20% of local access lines.[19] And, significantly, most of these lines — about 60-

[17] That holding is not only at odds with the statutory language, but also the legislative history of section 272(g). Although the legislative history of section 272(g) is scant, two clear messages emerge: (1) joint marketing will be a critical marketing tool; and (2) there consequently must be "parity among competing industry sectors" in the rules that apply. The Commission's overly narrow construction of section 272(g) is not faithful to either of these goals. S. Rep. No. 104-23, at 23 (1995). It is to this end that Congress adopted section 271(e) restricting joint marketing by large interexchange carriers before BOCs had similar opportunities.

[18] *UNE Fact Report 2002* (*Fact Report*) I-14, I-15, Attachment "A" to the Comments of SBC Communications Inc., CC Docket 01-338, (Apr. 5, 2002).

[19] *Id* at I-6.

70% — are served by CLECs' own switches.[20] This data, moreover, vastly understates the success of CLECs in winning lines. Not surprisingly, CLECs have focused on the more profitable segment of the local exchange market and have turned to high-cost, low-volume customers only where the prospect of regulatory arbitrage makes it worthwhile. As a proportion of the market segment where they actually compete for customers, CLECs' market share is thus even higher than the figure noted above. For example, in densely populated areas, CLECs' market share of business services can easily exceed 30 percent, and, in some places, 40 percent.[21]

Given this competition from multiple providers — all of whom have complete freedom to offer bundled service packages — there is no justification for continued restrictions on the ability of the BOCs to offer these same packages. Denying them that flexibility not only skews the marketplace — injecting the Commission inappropriately into the process of picking "winners" and "losers" — but, equally important, denies consumers the full competitive benefits that BOCs can bring to the marketplace. Accordingly, the Commission should hold that: (1) § 272(g) permits BOCs to offer bundled packages of services on an exclusive basis; and (2) this statutory authority supersedes any contrary restriction under the MFJ.[22]

---

[20] *See*, Att. A, Summary of Competitive Entry in SBC Regions – Comments of SBC Communications Inc., CC Docket 01-338, p. 3 (Apr. 5, 2002).

[21] *Id.*

[22] Another activity that the Commission erroneously held is outside the scope of section 272(g) is post-sale customer care. That holding ignores the realities of the telecommunications market. In this market, the carriers' relationships with customers are ongoing in nature. Unlike a sale of goods, where a customer pays a price and receives a product, there is no absolute closing of a sale in a telecommunications world. Carriers have to continuously keep up the relationship with the customer and provide increasing customer care just to retain the customer's business and facilitate the customer's effective use of the services. Customers change carriers without any contact with their previous carrier. Churn rate is at an all time high. Post-sale care is just as important a marketing tool as the initial sale; every contact with the customer is an opportunity to retain or enhance the customer relationship. To permit the BOCs' competitors to market their services with post-sale care without any corresponding nondiscrimination obligation, while continuing to impose the nondiscrimination obligation on the BOCs' even in states where they have received 271 authority, is anticompetitive and contrary to the intent of the statute and the interests of consumers.

B. The Commission Should Eliminate Script Requirements.

The Commission also should eliminate the script requirements that apply when new customers call a BOC for telephone service. These requirements may have been appropriate at a time when long-distance competition was in its nascent stages and customers were unaware of their choices. Those days, however, are ancient history. IXCs have spent been billions of dollars advertising their services, and customers are well aware of their long distance choices.[23] It makes no difference whether this is a new or existing customer, or whether the customer calls in for the first or an additional line. It is hard to imagine that there is *any* customer that is unaware that there are multiple carriers from which he/she may obtain long-distance service or of who at least some of those carriers are.

If the Commission nevertheless decides to retain some script obligation, it should, at most, require BOCs to inform customers that they have a choice of long-distance carriers. The BOCs could, if they so choose, provide consumers with additional information, but they should not be forced to. Other competitors in the local market certainly do not inform customers who call them for local service that they may obtain long-distance services from the BOCs; there is no reason why the BOCs should have different regulatory obligations at this juncture.

The Commission has already modified the scripting obligations that existed under the MFJ in recognition of the tension between these obligations and the BOCs' right to market the services of their § 272 affiliate. In *BellSouth*, the Commission agreed that the BOC, during an inbound call, should be allowed to recommend its long distance affiliate, as long as it contemporaneously states that other carriers also provide long distance service and offers to read a random list of the available interexchange carriers.[24] In *AT&T vs. New York Tel. Co*., the

[23] Thus, for example, Legg Mason reports that the MCI Neighborhood Plan, " will be backed up by a national mass media advertising campaign, marking the first time that any local service offering will be the focus of the kind of intensive advertising that in the past has been characteristic of the long-distance and wireless sectors." *WorldCom/MCI Bundled Phone Offer Challenges Rivals, Regulators*, LEGG MASON EQUITY RESEARCH INDUSTRY UPDATE – TELECOM REGULATION April 23, 2002.

[24] *Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and

Commission held that the BOCs' obligation only applies to inbound calls seeking "new service" and does not apply to customers requesting a second line.[25] The Commission, though, must now go further. It should explicitly eliminate the requirement that BOCs offer to read customers, in random order, a list of IXCs available for presubscription.[26]

C. Restrictions on Teaming Arrangements Severely Curtail the Effectiveness of the BOCs' Offers In Non-271 Authorized States.

A third area in which the equal access requirements are unnecessary and harmful relates to teaming arrangements. There are two separate MFJ requirements that hamper the BOCs from entering into effective business arrangements today. These are discussed, in turn, below.

First, BOCs are subject to a nondiscriminatory procurement obligation. Under this requirement, the BOCs may not procure services or facilities without notifying a reasonable number of potential suppliers of their need and obtaining competitive bids. For example, before ordering an end-to-end service, such as frame relay service or a calling card service, in areas in which it lacks § 271 authority, a BOC may be required to solicit competitive bids from potential long-distance "partners," instead of simply selecting the carrier of its choice. This process delays the BOCs' ability to deliver services to customers in a timely way. Additionally, it forces the BOCs to reveal their business plans in advance to competitors.

There is no need for this requirement. Like many of the MFJ requirements, it stems from the court's concern that the BOCs would favor their former affiliate, AT&T, in their partnering arrangements. It should be more than evident to the Commission that there is no longer any basis for such concerns. Moreover, any concern that the BOC could discriminate in favor of its

---

Order, 13 FCC Rcd 539, 667-72, ¶¶ 231-39 (1997) *(BellSouth South Carolina Order Section 271 Order*), *aff'd sub nom. BellSouth Corp. v. FCC*, 162 F.3d 678 (D.C. Cir. 1998).

[25] *AT&T Corp v. New York Tel. Co*., Memorandum Opinion and Order, 15 FCC Rcd 19998, ¶ 4 (2000).

[26] Currently, the BOCs must read these scripts even in states in which they lack section 271 authority. That requirement is a relic of the days in which it was feared the BOCs would discriminate in favor of AT&T. Clearly, it no longer serves any valid purpose.

own affiliate is addressed by § 272(c). To the extent the MFJ procurement restrictions have been carried over by § 251(g), they no longer serve any useful purpose.

Second, BOCs are limited in their ability to enter into productive teaming arrangements by a lack of clarity in the continuing scope of the MFJ's nondiscrimination obligation. Specifically, uncertainty as to restrictions on their right to "endorse or promote" one IXC's service over another cloud their ability to enter into such arrangements.[27]

In asking the Commission to clarify the application of equal access to teaming arrangements, SBC by no means suggests that BOCs should be able to skirt the limits of § 271 with respect to such arrangements. For example, SBC agrees that business arrangements in non-271 states should not be branded under the BOCs' name and that the long distance provider should not be relegated to a "secondary player" in the package. However, if the arrangement does not violate § 271, § 251(g) should not pose additional barriers. Today, it is not clear what a BOC may or may not do in conjunction with a partner IXC. The *Qwest Teaming Order* for example, it is not clear the to the extent which BOCs can provide a single point of contact for trouble reports in situations in which they are partnering with another carrier – e.*g.* to provide end-to-end data services. Customers in the data market want a single point of contact to meet their end-to-end needs. This is critical for maintenance and repair, installation and testing, and customer care functions. For example, an end user will call the BOC and a BOC representative will determine if the trouble is on the BOC's side of the interface. If not, the BOC will close the ticket and direct the end user to call the complementary carrier and start the trouble ticket process all over again. This inconveniences the end user, causes an enormous amount of frustration for all parties involved and results in loss of time and productivity. Most disturbingly, it exacerbates the downtime on a data network, which is often critical to the customer's business and may put the customer itself in a non-competitive situation. Because data networks are extremely difficult to duplicate, it is of critical importance to minimize a customer's downtime risk for those

[27] The Commission discussed this requirement in the *Qwest Teaming Order* where it held that the BOCs' arrangements with Qwest may have violated § 251(g). *Qwest Teaming Order* at ¶¶ 57-63.

networks. Because the extent of the BOCs authority to team with other providers is always subject to a case-by-case analysis and the Commission's analysis of the permissibility of these arrangements depends on the "totality of the involvement,"[28] it severely hamstrings the BOCs' provision of services in a competitive market, especially the data market, where its competitors have already gained a significant market share.

What is even more troubling to SBC is that the Commission staff has intimated that the *Qwest* analysis applies even *after* the BOC receives 271 authority in a state. That is, even after SBC is permitted to provide long distance service in a market, it cannot brand the service as its own or provide customer care to its customers. Although SBC recognizes that interLATA long distance transport needs to be provided by its 272 long distance affiliate, SBC ought to have the ability to package the service under its own brand while making clear that the § 272 affiliate is in fact the long distance provider. Further, at least in authorized states, as discussed above, SBC ought to be able to provide customer care functions, especially maintenance and repair, without a concomitant requirement to provide the same functions to all IXC.

BOCs ought to be able to deliver the best possible service to their customers, including repair and other post-sale customer care. The informal advice SBC has received from staff would prevent it from doing so. SBC can see no public policy benefit from such a restriction and believes it to be flatly contrary to the fundamental purpose of the Act – which is to offer consumers *better* service at a better price.

In summary, to permit BOCs to compete effectively in the market, the Commission should clarify that the historical nondiscriminatory procurement safeguards no longer apply. Further, it should modify its restrictions and hold that teaming arrangements are permissible if the BOC clearly specifies the identity of the long distance provider. As long as the BOC is not performing impermissible functions and is clearly identifying the carrier for long distance, it should be permitted to answer customer inquiries and perform other customer care functions,

[28] *Qwest Teaming Order* ¶¶ 37-38.

including trouble reporting and post sales care. All the BOCs' competitors can perform these functions as an integrated offering today and have, in fact, been providing these services for years, gaining a significant foothold on the data market. To impose nondiscrimination requirements on the BOC alone leads to an absurd and anti-competitive result.

IV. CONCLUSION

Section 251(g) was a transitional mechanism put in place by Congress to ensure that existing equal access and nondiscrimination safeguards were not obliterated without due consideration. However, Congress recognized the conflict between historical obligations and the new competitive marketplace today. Therefore, it specifically granted the Commission authority to supersede existing obligations.

The MFJ obligations no longer serve any purpose. The obligations that relate to BOCs marketing practices, in particular, affirmatively impede competition and deny the BOCs ability to achieve parity with their competitors, contrary to the goals of the 1996 Act. Six years after the passage of the Communications Act, the Commission should recognize the realities of today's marketplace and eliminate these requirements. Any other result places BOCs at a competitive disadvantage and harms customers.

By: /s/ Anu Seam
Anu Seam
Gary A. Phillips
Paul K. Mancini

1401 I Street NW 4th Floor
Washington, D.C. 20005

202-326-8891-Phone
202-408-8763-Facsimile

Its Attorneys

May 13, 2002